

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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RHASHAUN BEEKS,

Plaintiff,

-against-

EDWARD REILLY, et al.,

Defendants.  
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**REPORT AND  
RECOMMENDATION**  
CV 07-3865 (JFB)(ARL)

**LINDSAY, Magistrate Judge:**

On January 6, 2009, plaintiff was ordered to show cause why the undersigned should not recommend to District Judge Bianco that plaintiff's complaint be dismissed for failure to prosecute under Federal Rule of Civil Procedure 41(b) (the "Order"). (*See* Docket Entry 36.) A description of the procedural history of this action is contained in the Order. Plaintiff was given a deadline to respond in writing no later than February 6, 2009. Although nearly four months have elapsed since the deadline expired, plaintiff has not responded to the Order. If fact, the court has not received any correspondence from plaintiff since March 2008. The court is unaware of plaintiff's whereabouts, except that defendants learned that plaintiff was released on parole from the Franklin Correctional Facility in September 2008. (*See* Docket Entry 34.)

In the Order, plaintiff was warned that it is his obligation to notify the court of his current address. *See Garner v. Owens*, No. CV 08-222 (CBA)(LB), 2008 WL 5191908 at \*2 (E.D.N.Y. Dec. 9, 2008). Plaintiff was also warned that a district court has the power to dismiss a complaint for failure to comply with a court order, treating noncompliance as a failure to prosecute. *See Simmons v. Abruzzo*, 49 F.3d 83, 87 (2d Cir. 1995). Although plaintiff was given a deadline to respond, plaintiff has not complied with the Order. Copies of all correspondence from the court has been sent to plaintiff's last-known address via certified mail. Given the repeated opportunities given to plaintiff to provide a current address and to engage in this litigation, and plaintiff's failure to do either, dismissal is warranted.

Accordingly, the undersigned respectfully recommends that plaintiff's complaint be dismissed for plaintiff's failure to prosecute pursuant to Rule 41(b).

A copy of this Report and Recommendation will be mailed to plaintiff's last-known address. Any objections to this Report and Recommendation must be filed with the Clerk of the Court with a courtesy copy to the undersigned within 10 days of such service. Failure to file objections within this period waives the right to appeal the District Court's Order. *See* 28 U.S.C. §636(b)(1); FED. R. CIV. P. 72; *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Dated: May 27, 2009  
Central Islip, New York

/s/  
ARLENE ROSARIO LINDSAY  
United States Magistrate Judge